

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

REYBOLD CONSTRUCTION  
CORPORATION,  
116 East Scotland Drive  
Bear, DE 19701

Plaintiff,

V.

RALPH GREBOW,  
15 Whitbay Drive  
West Orange, NJ 07052

Defendant.

C.A. No.

## JURY TRIAL DEMANDED

## **NOTICE OF REMOVAL OF ACTION**

**TO: CLERK, UNITED STATES DISTRICT COURT CLERK FOR THE  
DISTRICT OF DELAWARE**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, defendant Ralph Grebow (“Grebow”) hereby removes this case, instituted by Plaintiff Reybold Construction Corporation (“Reybold Construction”), from the Superior Court of the State Delaware in and for New Castle County, to this Court, without waiver of any defenses, procedural or substantive. Defendant Grebow alleges the following bases for removal:

1. Keybold Construction commenced this action by filing a Complaint (“the Complaint”) in the Superior Court of the State of Delaware in and for New Castle County (“the State Court Action”) purporting to enforce liquidated damages. A true and correct copy of the Complaint is attached hereto in Exhibit A.

2. Upon information and belief, and as alleged in the Complaint, Reybold Construction is organized and existing under the laws of the state of Delaware. (*See* Ex. A ¶ 1). Upon information and belief, and based upon the Delaware Corporation Bureau's records, Reybold Construction maintains its principal place of business in Bear, Delaware. Therefore, for

purposes of this Court's diversity jurisdiction, Reybold Construction is a citizen of Delaware.

3. Ralph Grebow is a citizen and resident of the State of New Jersey who resides at 15 Whitbay Drive, West Orange, New Jersey. Defendant does not maintain a residence in any other State. Therefore, for purposes of this Court's diversity jurisdiction, Grebow is a citizen of the State of New Jersey.

4. The Complaint alleges that on September 26, 2005, Reybold Construction entered into an AIA A101-1997 Standard Form of Agreement between Owner and Contractor ("the Agreement") with non-party Atlantic Meridian Crossing, LLC ("Atlantic"). It further alleges that in March 2006, Reybold Construction entered into the "First Amendment to [the] Agreement" ("the Amendment") with Atlantic and Grebow, under which Grebow would purportedly be held personally liable for liquidated damages if Atlantic failed to perform its obligations under the Agreement, and that Atlantic failed to perform its obligation "which triggered [sic] the obligation of Grebow to pay the liquidated damages of \$1,500,000." (See Ex. A ¶¶ 3 - 9). Defendant denies these allegations and all liability. Accordingly, the amount in controversy in this action exceeds \$75,000, exclusive of interest and costs.

5. Hence, this Court has original jurisdiction over this action, pursuant to 28 U.S.C. § 1332(a), in that the action is between citizens of different states; there is complete diversity of citizenship between the parties; and the amount in controversy, exclusive of interests and costs, exceeds the sum or value of \$75,000.00.

6. Defendant is not a citizen or resident of Delaware and, therefore, is entitled to remove this action.

7. This Notice of Removal is timely filed because service of the Complaint was purportedly made upon the Delaware Secretary of State, as agent for Grebow for the purposes of the acceptance of legal process, pursuant to 10 *Del. C.* § 3104, on June 2, 2008. Under Delaware

law, service upon the Secretary of State “shall be as effectual to all intents and purposes as if made personally upon the defendant . . . provided, that not later than 7 days following the filing of the return of services of process in the court in which the civil action is commenced . . . the plaintiff or a person acting in the plaintiff’s behalf shall send by registered mail to the nonresident defendant . . . a notice consisting of a copy of the process and complaint served upon the Secretary of State and the statement that service of the original of such process has been made upon the Secretary of State of this State.” 10 *Del. C.* § 3104(d). While no such notice has been received by Grebow, and Grebow otherwise contests the validity of service, the earliest possible time that the running of the thirty day removal period could have commenced is June 2, 2008. Accordingly, this Notice is being filed within 30 days of the date of the receipt by the defendant of the Complaint by “service or otherwise” within the meaning of 28 U.S.C. § 1446.

8. In accordance with 28 U.S.C. § 1446(d), Grebow has given contemporaneous written notice of the within Notice of Removal to all parties and to the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County.

9. To date, the docket entries in the State Court Action consist in Reybold Construction’s Complaint, Entry of Co-Appearance on behalf of Plaintiff, Summons, Letter from the Prothonotary regarding case being reassigned to Judge Cooch, and the Sheriff’s Return indicating service of process on Grebow through the Delaware Secretary of State on June 2, 2008. A copy of these documents are attached hereto as Exhibit A.

WHEREFORE, Defendant Ralph Grebow respectfully requests that this Court assume jurisdiction of this action and enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

Dated: June 20, 2008



David A. Felice (#4090)

Cozen O'Connor

1201 North Market Street, Suite 1400

Wilmington, DE 19801

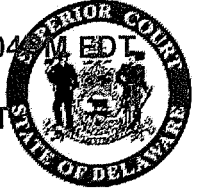
Telephone: (302) 295-2000

Facsimile: (302) 295-2013

*Attorneys for Defendant Ralph Grebow*

# **EXHIBIT A**

EFiled: May 14 2008 12:04  
Transaction ID 19825837  
Case No. 08C-05-100 CHT



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

REYBOLD CONSTRUCTION  
CORPORATION,

Plaintiff,

v.

RALPH GREBOW,

Defendant.

)  
) C.A. No.  
)  
)  
) TRIAL BY JURY OF  
) TWELVE DEMANDED  
)

) ALL ALLEGATIONS OF THE COMPLAINT  
) MUST BE ANSWERED BY AFFIDAVIT IN  
) ACCORDANCE WITH THE PROVISIONS  
) OF 10 DEL. C. § 3901

**COMPLAINT**

1. Plaintiff, Reybold Construction Corporation ("Reybold") is a Delaware corporation.

2. Defendant, Ralph Grebow ("Grebow"), is a New Jersey resident whose agent for service of process is the Delaware Secretary of State pursuant to 10 Del. C. § 3104(c)(1) and (6).

3. Reybold entered into an "AIA A101-1997 Standard Form of Agreement between Owner and Contractor" (the "AIA Agreement") dated September 26, 2005 with Atlantic Meridian Crossing, LLC ("Atlantic"). Pursuant to the AIA Agreement, Atlantic agreed to pay Reybold \$10,435,000 for construction and services relating to common areas and other improvements in the subdivision of Meridian Crossing in Bear, Delaware, in which Atlantic purchased building lots from affiliates of Reybold.

4. In connection with the AIA Agreement, Reybold requested that Grebow provide a personal guaranty of certain obligations of Atlantic.

5. Grebow is the sole manager and member of The Atlantic Companies, LLC, which is the sole member of Atlantic.

6. In March, 2006, Reybold, Atlantic and Grebow entered into a "First Amendment to Agreement" (the "Amendment"), which modified the AIA Agreement by limiting the liability of Atlantic to \$6,938,880, plus liquidated damages of \$1,500,000, in the event that Atlantic did not purchase an additional 131 building lots in Meridian Crossing. A copy of the Amendment is attached hereto as Exhibit A.

7. The Amendment provides, in relevant part:

"Reybold, Atlantic and Grebow agree that: (a) Reybold's damages resulting from Atlantic's non-performance of the [AIA] Agreement are difficult, if not impossible, to determine; (b) it would be impracticable and extremely difficult to fix the actual damages suffered by Reybold as a result of such non-performance; and (c) the amount of the liquidated damages specified herein is a fair estimate of those damages which has been agreed to in an effort to cause the amount of damages to be certain."

8. In exchange for the foregoing limitation of liability, Grebow agreed to personally assume and perform the obligations of Atlantic under the AIA Agreement, to the extent of the liquidated damages provision contained in the Amendment.

9. Atlantic failed to purchase all of the additional 131 building lots from affiliates of Reybold by April 20, 2007, which triggered the obligation of Grebow to pay the liquidated damages of \$1,500,000.

10. As required under the Amendment, Reybold sent written demand to Grebow for payment of the liquidated damages of \$1,500,000.

11. Grebow has failed and refused to pay the liquidated damages of \$1,500,000 to Reybold as required by the Amendment.

12. Grebow's failure to pay the liquidated damages of \$1,500,000 constitutes a breach of the Amendment.

13. As a result of Grebow's breach of the Amendment, Reybold is entitled to a judgment against Grebow in the amount of \$1,500,000.

**WHEREFORE**, Reybold demands that judgment be entered against Grebow in the amount of \$1,500,000, plus interest and the costs of this action.

**MORRIS JAMES LLP**

/s/ John H. Newcomer, Jr.  
John H. Newcomer, Jr. (I.D. # 2323)  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19801  
(302) 888-6975  
jnewcomer@morrisjames.com

and

**LAW OFFICES OF  
JEFFREY M. WEINER, P.A.**  
Jeffrey M. Weiner (I.D. # 403)  
1332 King Street  
Wilmington, Delaware 19801  
(302) 652-0505  
legalw@aol.com

Co-Counsel for Reybold Construction  
Corporation

Dated: May 14, 2008

1706373/1



EFiled: May 16 2008 4:27 PM

Transaction ID 19871055

Case No. 08C-05-100 CHT



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

**REYBOLD CONSTRUCTION  
CORPORATION,**

**Plaintiff,**

**v.**

**RALPH GREBOW,**

**Defendant.**

**C.A. No. 08C-05-100-CHT**

**ENTRY OF CO-APPEARANCE**

PLEASE ENTER the co-appearance of Jeffrey M. Weiner, Esquire, 1332 King Street, Wilmington, Delaware 19801 on behalf of Plaintiff Reybold Construction Corporation.

~~/s/ JEFFREY M. WEINER, ESQUIRE #403~~

~~JEFFREY M. WEINER, ESQUIRE #403~~

~~1332 King Street~~

~~Wilmington, DE 19801~~

~~(302) 652-0505~~

~~Co-Counsel for Plaintiff~~

**DATED: May 16, 2008**

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

EFiled: Jun 6 2008 4:40P  
Transaction ID 20144519  
Case No. 08C-05-100 RRC



**SHARON D. AGNEW**  
PROTHONOTARY, NEW CASTLE COUNTY

NEW CASTLE COUNTY COURT HOUSE  
500 N. KING STREET  
LOWER LEVEL 1, SUITE 500  
WILMINGTON, DE 19801-3746  
(302) 255-0800

JUDGMENT DEPARTMENT  
500 N. KING STREET  
1<sup>ST</sup> FLOOR, SUITE 1500  
WILMINGTON, DE 19801-3704  
(302) 255-0556

JOHN H NEWCOMER  
MORRIS JAMES LLP  
500 DELAWARE AVE., STE. 1500  
P.O. BOX 2306  
WILMINGTON DE 198990000

REYBOLD CONSTRUCTION VS RALPH GREBOW,  
CIVIL ACTION NO. 08C-05-100 RRC

DEAR COUNSEL:

AS OF THIS DATE THE ABOVE CAPTIONED CASE HAS BEEN  
REASSIGNED TO JUDGE COOCH. PLEASE REMEMBER THAT ON  
ALL FUTURE DOCUMENTS AND FILINGS ON THIS CASE, YOU MUST  
REFERENCE THE ASSIGNED JUDGE BY INCLUDING THE JUDGE'S  
INITIALS (RRC) AS A SUFFIX TO THE CIVIL ACTION NUMBER.

IF YOU HAVE ANY QUESTIONS REGARDING THE ABOVE  
INFORMATION, PLEASE CALL CIVIL DEPUTY ELLEN DAVIS AT  
255-0751.

VERY TRULY YOURS,

A handwritten signature in black ink that reads "Sharon Agnew".

SHARON AGNEW  
PROTHONOTARY

DATED:06/06/2008

EFiled: Jun 17 2008 12:36 PM EDT  
Transaction ID 20276314  
Case No. 08C-05-100 RRC



## Sheriff's Return

Served the within Summons and copy of the following complaint:

SUMMONS/COMPLAINT

this day, Monday, June 2, 2008, personally upon **HARRIET SMITH WINDSOR**, Secretary of State of the State of Delaware, by leaving with her a true and correct copy of the said Summons for the defendant:

RALPH GREBOW

FILED  
PROTHONOTARY  
2008 JUN 17 AM 8:48

and a copy of the Complaint for the said defendant, together with the sum of \$ 2.00 Dollars, as prescribed by Section of Title of the Delaware Code of 1978.

So Answers,

*Jim Higdon*

Jim Higdon  
Sheriff of Kent County

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

REYBOLD CONSTRUCTION  
CORPORATION,  
116 East Scotland Drive  
Bear, DE 19701

Plaintiff,

V.

RALPH GREBOW,  
15 Whitbay Drive  
West Orange, NJ 07052

Defendant.

C.A. No.

## JURY TRIAL DEMANDED

## CERTIFICATE OF SERVICE

I, David A. Felice, hereby certify under penalty of perjury that, on this 20<sup>th</sup> day of June, a true and correct copy of the foregoing *Notice of Removal of Action* was served upon counsel of record in the manner indicated:

### *Hand Delivery*

John H. Newcomer, Jr., Esquire  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19801

*Hand Delivery*

Jeffrey M. Weiner, Esquire  
Law Offices of Jeffrey M. Weiner, P.A.  
1332 King Street  
Wilmington, DE 19801

David A. Felice  
David A. Felice (#4090)

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

**I. (a) PLAINTIFFS**

REYBOLD CONSTRUCTION CORPORATION

**DEFENDANTS**

RALPH GREBOW

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF New Castle County, Delaware  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

John H. Newcomer, Jr., Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (302) 888-6975; Jeffrey M. Weiner, Law Offices of Jeffrey M Weiner, P.A., 1332 King Street, Wilmington, DE 19801 (302) 652-0505

ATTORNEYS (If Known)

David A. Felice, Cozen O'Connor, 1201 North Market Street, Suite 1400, Wilmington, DE 19801 (302) 295-2000

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 DIVERSITY (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |  |   |  |
|---|--|---|--|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1    | Incorporated or Principal Place of Business in This State     | PTF <input checked="" type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5                    |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6                    |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-- Med Malpractice <input type="checkbox"/> 365 Personal Injury-- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence  <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act  <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Breach of contract

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ in excess of \$1,500,000

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE June 20, 2008 SIGNATURE OF ATTORNEY OF RECORD

*David A. Felice (#4090)***FOR OFFICE USE ONLY**

RECEIPT# \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_